Hamiza bt Nazimuddin v Perbadanan Kemajuan Filem Nasional Malaysia

HIGH COURT (KUALA LUMPUR) — JUDICIAL REVIEW NO WA-25–35–02 OF 2023
AMARJEET SINGH J
22 MAY 2025

Administrative Law — Judicial review — Application for — Dismissal due to failure to pass examination during probationary period — Dismissal under reg 48 of (Appointment, Promotion and Termination of Service) Regulations 2012 ('Regulations') and/or reg 50(1) read with reg 52 of Regulations — Whether applicant provided with right to show cause before decision to terminate taken — Whether decision to terminate already made before applicant asked to show justification — Whether there was fatal error — Whether use of reg 48 of Regulations to terminate an error of law

The applicant was appointed as a probationary Programme Producer at Grade B 51 in Perbadanan Kemajuan Filem Nasional Malaysia ('FINAS'). The probation period was between one to three years. It was a condition of service that she passed her examination for confirmation within the probation period. The applicant, however, failed to pass the examinations held on four occasions, although her probation period was extended. FINAS then proceeded to terminate the applicant ('the decision'), without providing the applicant the right to show cause before the decision to terminate had been taken. On appeal against the decision and after the applicant had submitted her justification, FINAS had vide letter dated 22 November 2022, dismissed the applicant's appeal. In the present application, the applicant sought for an order of certiorari to quash the decision if FINAS in terminating the applicant's service. The applicant also sought to quash the decision letter dated 22 November 2022, which maintained the decision terminating the applicant after the applicant had submitted her justification. The issues that arose for determination were whether FINAS complied with reg 48 of the Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012 ('the Regulations') and/or reg 50(1) read with reg 52 of the Regulations before terminating the applicant.

Held, allowing the applicant's application:

(1) Termination under reg 50(1) of the Regulations of a person under probation was subject to the conditions in reg 52 of the Regulations. The mandatory prerequisites that must be fulfilled were that an: (a) officer was required to pass the examination as stipulated in the letter of offer

within one to three years, or any extension of the probation period to be confirmed in service; (b) officer may be terminated if he or she had not been confirmed in service within the stipulated time frame; and (c) officer shall not be terminated unless the officer had been given an opportunity to show cause why his services shall not be terminated. Here, the first condition was satisfied as the applicant did not pass the examination as required within the stipulated probation time frame. The applicant had not been confirmed in service within the stipulated time frame, therefore the second condition was also satisfied. However, the third condition was not satisfied as the applicant was not given the right to show cause before the decision to terminate had been taken. This was procedural impropriety (see paras 10–13).

(2) The decision was taken to terminate the applicant without giving the requisite show cause as provided in reg 52 of the Regulations. The decision to terminate was already made, and only then the applicant was asked to show justification why she should not be terminated from service. This was a fatal error. The correct procedure was to send a show cause to the applicant to explain why she ought not be terminated for not being confirmed. The decision was to be made after considering the applicant's representations. On these grounds alone, the decision to terminate must be quashed (see paras 14, 18 & 20).

(3) The reason of reg 48 of the Regulations was a ground for terminating the applicant was a mystery. Apart from citing the regulation in the letter of termination and the letter maintaining the decision to terminate dated 22 November 2022, nothing was stated of any of the prerequisites stipulated in reg 48 of the Regulations or that the prerequisites even exist. Therefore, the use of reg 48 of the Regulations to terminate the applicant was an error of law of the illegality or irrationality kind. On this ground, the impugned decisions were also quashed (see paras 21 & 23).

[Bahasa Malaysia summary

Permohonan ini difailkan oleh pemohon yang telah dilantik sebagai Penerbit Program percubaan pada Gred B51 di Perbadanan Kemajuan Filem Nasional Malaysia ('FINAS'). Tempoh percubaan adalah antara satu hingga tiga tahun. Menurut syarat perkhidmatan, pemohon mestilah lulus peperiksaan pengesahan dalam tempoh percubaan tersebut. Namun demikian, pemohon telah gagal dalam peperiksaan yang dijalankan sebanyak empat kali, walaupun tempoh percubaannya telah dilanjutkan. FINAS kemudiannya menamatkan perkhidmatan pemohon ('keputusan tersebut') tanpa memberikan hak kepada pemohon untuk menunjukkan sebab sebelum keputusan penamatan dibuat. Atas rayuan pemohon dan setelah pemohon mengemukakan representasinya, FINAS melalui surat bertarikh 22 November 2022 menolak rayuan tersebut dan mengekalkan keputusan menamatkan perkhidmatan pemohon. Dalam permohonan ini, pemohon memohon perintah certiorari untuk membatalkan

keputusan FINAS menamatkan perkhidmatannya. Pemohon turut memohon untuk membatalkan surat keputusan bertarikh 22 November 2022 yang mengekalkan penamatan tersebut selepas pemohon mengemukakan justifikasinya. Isu yang timbul untuk ditentukan ialah sama ada FINAS telah mematuhi peraturan 48 Peraturan-Peraturan Pegawai Awam (Pelantikan, Kenaikan Pangkat dan Penamatan Perkhidmatan) 2012 ('Peraturan-Peraturan') dan/atau peraturan 50(1) dibaca bersama peraturan 52 Peraturan-Peraturan sebelum menamatkan perkhidmatan pemohon.

Diputuskan, membenarkan permohonan:

(1) Penamatan di bawah peraturan 50(1) Peraturan-Peraturan adalah tertakluk kepada syarat-syarat dalam peraturan 52 Peraturan-Peraturan. Prasyarat mandatori yang mesti dipenuhi ialah: (a) seorang pegawai dikehendaki lulus peperiksaan sebagaimana dinyatakan dalam surat tawaran dalam tempoh satu hingga tiga tahun, atau mana-mana lanjutan tempoh percubaan, bagi tujuan pengesahan dalam perkhidmatan; (b) seorang pegawai boleh ditamatkan perkhidmatan sekiranya beliau tidak disahkan dalam perkhidmatan dalam tempoh yang ditetapkan; dan (c) seorang pegawai tidak boleh ditamatkan perkhidmatannya melainkan beliau telah diberikan peluang untuk menunjukkan sebab mengapa perkhidmatannya tidak sepatutnya ditamatkan. Dalam kes ini, syarat pertama telah dipenuhi kerana pemohon gagal lulus peperiksaan sebagaimana yang ditetapkan dalam tempoh percubaan. Pemohon juga tidak disahkan dalam perkhidmatan dalam tempoh yang ditetapkan, justeru syarat kedua turut dipenuhi. Namun demikian, syarat ketiga tidak dipenuhi kerana pemohon tidak diberi peluang untuk menunjukkan sebab sebelum keputusan penamatan dibuat. Ini merupakan satu ketidakpatuhan prosedur (lihat perenggan 10–13).

(2) Keputusan untuk menamatkan perkhidmatan pemohon telah dibuat tanpa memberikan pemohon peluang untuk menunjukkan sebab seperti yang dikehendaki di bawah peraturan 52 Peraturan-Peraturan. Keputusan penamatan telah pun dibuat terlebih dahulu dan hanya selepas itu pemohon diminta untuk mengemukakan justifikasi mengapa perkhidmatannya tidak sepatutnya ditamatkan. Kesilapan ini adalah bersifat fatal. Prosedur yang betul adalah dengan mengeluarkan surat tunjuk sebab kepada pemohon untuk menjelaskan mengapa beliau tidak wajar ditamatkan kerana kegagalan disahkan dalam jawatan. Keputusan hanya boleh dibuat setelah pertimbangan diberikan terhadap representasi pemohon. Atas alasan ini sahaja, keputusan penamatan tersebut hendaklah dibatalkan (lihat perenggan 14, 18 & 20).

(3) Alasan bahawa peraturan 48 Peraturan-Peraturan digunakan sebagai asas penamatan pemohon adalah tidak dapat difahami. Selain daripada memetik peraturan tersebut dalam surat penamatan dan surat bertarikh

22 November 2022 yang mengekalkan keputusan tersebut, tiada apa-apa yang menunjukkan kewujudan mana-mana prasyarat yang diperuntukkan di bawah peraturan 48, atau bahawa syarat-syarat tersebut telah dipenuhi. Oleh itu, penggunaan peraturan 48 untuk menamatkan perkhidmatan pemohon adalah satu kesilapan undang-undang yang bersifat menyalahi undang-undang atau tidak munasabah. Atas alasan ini juga, keputusan-keputusan yang dipertikaikan itu hendaklah dibatalkan (lihat perenggan 21 & 23).]

Legislation referred to

Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012 regs 20(1)(b), (2), (3), 48, 50(1), (2), 52

Mohamed Izzul Faris bin Mohd Ghani (with Muhammad Nabil Nafis bin R Mustafa and Farah Zuleika bt Amir) (Syed Ibrahim & Co) for the applicant.
Tajul Anuar bin Zubairi (with Mohd Fadli bin Yaakob) (Ramli, Shahrir & Tajul) for the respondent.

Amarjeet Singh J:

INTRODUCTION

[1] On 27 February 2025, I allowed the application by Hamiza bt Nazimuddin ('the applicant') for an order of certiorari to quash the decision dated 31 October 2022 terminating her service as an officer of Perbadanan Kemajuan Filem Nasional Malaysia ('FINAS') under:

(a) sub-reg 50(1) of the Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012 ('the 2012 Regulations') on the ground that she was not confirmed in service although her probation period was extended; and also

(b) reg 48 of the 2012 Regulations, which concerns non-fulfilment of the threshold criteria for appointment.

[2] An order of certiorari was also issued to quash the decision dismissing her appeal against termination, as stated in the letter dated 22 November 2022. In view of the orders of certiorari that were granted, an order was made declaring that the applicant is reinstated to her position with the consequential order that she be paid back wages, allowances, and emoluments due to her from the date of termination, 31 October 2022.

[3] This judgment contains the reasons for my decision.

A BACKGROUND FACTS

[4] On 1 November 2018, the applicant was appointed as a probationary Programme Producer at Grade B 51 in FINAS. The probation period was between one to three years. It was a condition of service that she passes her B examination for confirmation within the probation period. The applicant failed to pass the examinations held on four occasions: (i) 8 November 2020; (ii) 29 September 2021; (iii) 25 May 2022; and (iv) 22 September 2022, although her probation period was extended.

C

[5] The applicant raised certain grounds regarding the setting of the examination and her yearly assessment, which I found were irrelevant to the issue before me, which was under reg 48 of the 2012 Regulations and/or sub-reg 50(1) of the 2012 Regulations.

D

[6] After considering the cause papers and the submissions of the parties, I found that there was only one issue to be determined. It is this: whether FINAS complied with reg 48 of the 2012 Regulations and/or sub-reg 50(1) read with reg 52 of the 2012 Regulations before terminating the applicant. FINAS E submitted that they complied with the regulations, while the applicant submitted that FINAS did not.

ANALYSIS AND DECISION

F **[7]** The starting point is to reproduce the relevant provisions of the 2012 Regulations, which FINAS relied govern termination from service. The first ground for terminating the applicant is reg 48 of the 2012 Regulations, which is in the following terms:

> (1) The Yang di-Pertuan Agong may terminate the service of an officer who G has not been confirmed in service if the officer has:
>
> (a) concealed any information regarding his health in the medical examination form;
>
> (b) made a false declaration in the statutory declaration as required by H paragraph 20(1)(b) and subregulation 20(2);
>
> (c) failed to comply with the requirement in subregulation 20(3); or
>
> (d) amended or falsified any document relating to his appointment.
>
> (2) For the purpose of terminating the service of an officer under paragraph I (1)(a), the Head of Department may direct the officer to undergo medical examination again, or the Head of Department may acquire the health information of the officer by any suitable means.

[8] The second ground for terminating the applicant was under sub-reg

50(1) of the 2012 Regulations, which read as follows:

> Subject to Subregulation (2), the Yang di-Pertuan Agong may terminate the service of an officer who is on probation for his first appointment who has failed to be confirmed in service during the probation period, whether the initial probation period or its extension.

Subregulation 50(2) of the 2012 Regulations is not relevant for our purposes.

[9] Regulation 52 of the 2012 Regulations provides as follows:

> The service of an officer shall not be terminated under Regulations 48 and 49 and Subregulations 50(1) and (2) unless the officer has been given the opportunity to show cause, within a period of not less than fourteen days from the date of receipt of notice to show cause, as to why his service shall not be terminated.

Termination under sub-reg 50(1)

[10] Termination under sub-reg 50(1) of the 2012 Regulations of a person under probation is subject to the conditions in reg 52 of the 2012 Regulations. Thus, the following mandatory prerequisites must be fulfilled:

(a) an officer is required to pass the examination as stipulated in the letter of offer within one to three years, or any extension of the probation period to be confirmed in service.

(b) an officer may be terminated if he or she has not been confirmed in service within the stipulated time frame (sub-reg 50(1) of the 2012 Regulations); and

(c) an officer shall not be terminated under sub-reg 50(1) of the 2012 Regulations unless the officer has been given an opportunity to show cause why his services shall not be terminated (reg 52 of the 2012 Regulations).

[11] I found that the first condition is satisfied. The applicant did not pass the examination as required within the stipulated probation time frame.

[12] I also found that the second condition was satisfied. The applicant had not been confirmed in service within the stipulated time frame.

[13] However, I found that the third condition was not satisfied. The applicant was not given the right to show cause before the decision to terminate had been taken. This is *procedural impropriety,* ie, a breach of the right to be heard before one is condemned by way of termination from service. It is trite that the 2012 Regulations is a subsidiary legislation that has the force of law and must be complied with by FINAS.

[14] FINAS did not comply with the third prerequisite. FINAS did not give the applicant a show cause *before* making a decision to terminate her services. This is clear from the letter dated 31 October 2022, which states as follows (the relevant parts are reproduced below):

> Puan,
>
> PENAMATAN PERKHIDMATAN SEBAGAI PENERBIT RANCANGAN GRED B 51 Dl PERBADANAN KEMAJUAN FILEM NASIONAL MALAYSIA (FINAS)
>
> Dengan segala hormatnya perkara di atas adalah dirujuk dan keputusan Jawatankuasa Panel Pembanguanan Sumber Manusia (PPSM) FINAS Bilangan 2 Tahun 2022 pada 25 Oktober 2022 adalah berkaitan.
>
> 2. Dimaklumkan bahawa seorang pegawai adalah layak disahkan dalam perkhidmatan apabila telah berkhidmat dalm percubaan bagi tempoh 1 hingga 3 tahun dan memenuhi syarat-syarat perkhidmatan seperti berikut:-
>
> (i) ...
>
> (ii) ...
>
> (iii) Lulus peperiksaan perkhidmatan yang disyaratkan;
>
> (iv) ...
>
> (v) ...
>
> 3. Walaubagaimanapun dalam tempoh pelanjutan tempoh percubaan tidak berdenda selama (1) tahun bermula 1 November 2021 sehingga 31 Oktober 2022, puan tidak memenuhi syarat di perkara 2(iii). Justeru, mesyuarat memutuskan puan tidak diperakukan bagi pengesahan dalam perkhidmatan *dan puan ditamatkan perkhidmatan dengan notis sebulan (1) bulan daripada tarikh surat ini dikeluarkan dan berkuatkuasa serta-merta.*
>
> 4. Keputusan dan tindakan ini adalah selaras dengan Perkara 4(c) di dalam Surat Pelantikan Tawaran puan rujukan FINAS (S) A.001/22/1 Jld. 12 bertarikh 2 Oktober 2018 *dan Peraturan 48 dan 50 Peraturan-Peraturan Pegawai Awam (Pelantikan, Kenaikan Pangkat Dan Penamatan Perkhidmatan) 2012 [P.U. (A) 1/2012]. Sehubungan itu, puan boleh mengemukakan justifikasi pembelaan diri untuk tidak ditamatkan dalam perkhidmatan berkuatkusa empat belas hari (14) dari tarikh surat ini.*
>
> 5. ...
>
> 6. ...
>
> Sekian, terima kasih.
>
> (PROF. DR. MD NASIR BIN IBRAHIM)
>
> Ketua Pegawai Eksekutif
>
> Perbadanan Kemajuan Filem Nasional Malaysia (FINAS)

[15] This letter clearly shows that the decision was taken to terminate the applicant without giving the requisite show cause as provided in reg 52 of the

2012 Regulations. The decision to terminate was already made, and only then the applicant was asked to show justification why she should not be terminated from service. This is a fatal error. FINAS had already made up its mind and terminated the applicant as early as 25 October 2022.

[16] The second decision is in the letter by FINAS dated 22 November 2022. The applicant sought to quash the decision in this letter, which maintained the decision terminating the applicant after the applicant had submitted her justification as directed in the letter dated 31 October 2022. The letter dated 22 November 2022 states (the relevant parts are reproduced below):

> Puan,
>
> PENAMATAN PERKHIDMATAN SEBAGAI PENERBIT RANCANGAN GRED B 51 DI PERBADANAN KEMAJUAN FILEM NASIONAL MALAYSIA (FINAS)
>
> Dengan segala hormatnya perkara di atas adalah dirujuk dan keputusan Jawatankuasa Panel Pembanguanan Sumber Manusia (PPSM) FINAS Bilangan 2 Tahun 2022 pada 25 Oktober 2022 adalah berkaitan.
>
> 2. Dimaklumkan bahawa surat representasi yang telah dikemukakan oleh puan kepada Jawatankuasa (PPSM) *tidak dipertimbangkan dan keputusan Jawatankuasa PPSM pada 25 Oktober 2022 adalah kekal dan muktamad* selaras dengan punca kuasa Ceraian 3.15.3 Minit Mesyuarat Ahli Perbadanan FINAS Bil. 1.1. Tahun 2021.
>
> 3. Jawatankuasa (PPSM) juga melahirkan rasa kecewa dan dukacita kerana puan gagal hadir dalam sesi pertemuan yang ditetapkan. Peluang dan ruang ini telah diberi kepada puan untuk mengemukakan keterangan tanpa prejudis kepada Jawatankuasa sebelum keputusan rayuan dipertimbangkan.
>
> 5. Justeru, dengan mengambil kira segala dasar, pekeliling dan tatacara yang berkuatkuasa, puan dimohon akur dengan keputusan ini selaras dengan *Peraturan 48 dan 50 Peraturan-Peraturan Pegawai Awam (Pelantikan, Kenaikan Pangkat Dan Penamatan Perkhidmatan) 2012 [P.U. (A) 1/2012].*
>
> 6. ...
>
> Sekian, terima kasih.
>
> (PROF. DR. MD NASIR BIN IBRAHIM)
>
> Ketua Pegawai Eksekutif
>
> Perbadanan Kemajuan Filem Nasional Malaysia (FINAS)

[17] Remarkably, the representation or justification of the applicant was not considered. What happened in the instant case is a breach of procedural fairness and/or *procedural impropriety.* The body in FINAS, ie, Jawatankuasa Panel Pembangunan Sumber Manusia (PPSM), which made the decision to terminate the applicant, is the same body that heard the applicant's justification and refused to consider the same and maintained the decision to terminate. In

A other words, the body that made the decision to terminate was the same body that decided the applicant's justification against termination.

[18] In the instant case, the provisions of sub-reg 50(1) and reg 52 of the 2012 Regulations were not complied with. The correct procedure is to send a show cause to the applicant to explain why she ought not be terminated for not being confirmed. The decision is to be made after considering the applicant's representations.

[19] However, in the instant case, the decision to terminate was made before giving the right to be heard provided in reg 52 of the 2012 Regulations. Further, after making the decision to terminate, there is no requirement in any provision giving the applicant the right to make a justification against the termination. This latter procedure is unknown to the 2012 Regulations.

[20] On these grounds alone, the decision to terminate must be quashed. This is not the end of the matter, as the other regulation relied on by FINAS to terminate the applicant must be addressed, ie, reg 48 of the 2012 Regulations.

Termination under reg 48

[21] Why reg 48 of the 2012 Regulations was a ground for terminating the applicant is a mystery. Apart from citing the regulation in the letter of termination dated 31 October 2022 and the letter maintaining the decision to terminate dated 22 November 2022, nothing is stated of any of the prerequisites stipulated in reg 48 of the 2012 Regulations or that the prerequisites even exist.

[22] Regulation 48 of the 2012 Regulations only apply if the person on probation, who has not been confirmed, had been found to have done the following acts:

(a) concealed any information regarding his health in the medical examination form;

(b) made a false declaration in the statutory declaration as required by para 20(1)(b) and sub-reg 20(2);

(c) failed to comply with the requirement in sub-reg 20(3); or

(d) amended or falsified any document relating to his appointment.

[23] Not one of the acts in reg 48 of the 2012 Regulations are relied on or shown to exist. The use of reg 48 of the 2012 Regulations to terminate the applicant is an error of law of the *illegality* or *irrationality* kind. On this ground, the impugned decisions are also quashed.

CONCLUSION

[24] For the above reasons, I allowed the judicial review application and made the orders as stated in paras [1] and [2] above.

Application allowed.

Reported by K Selvaraju